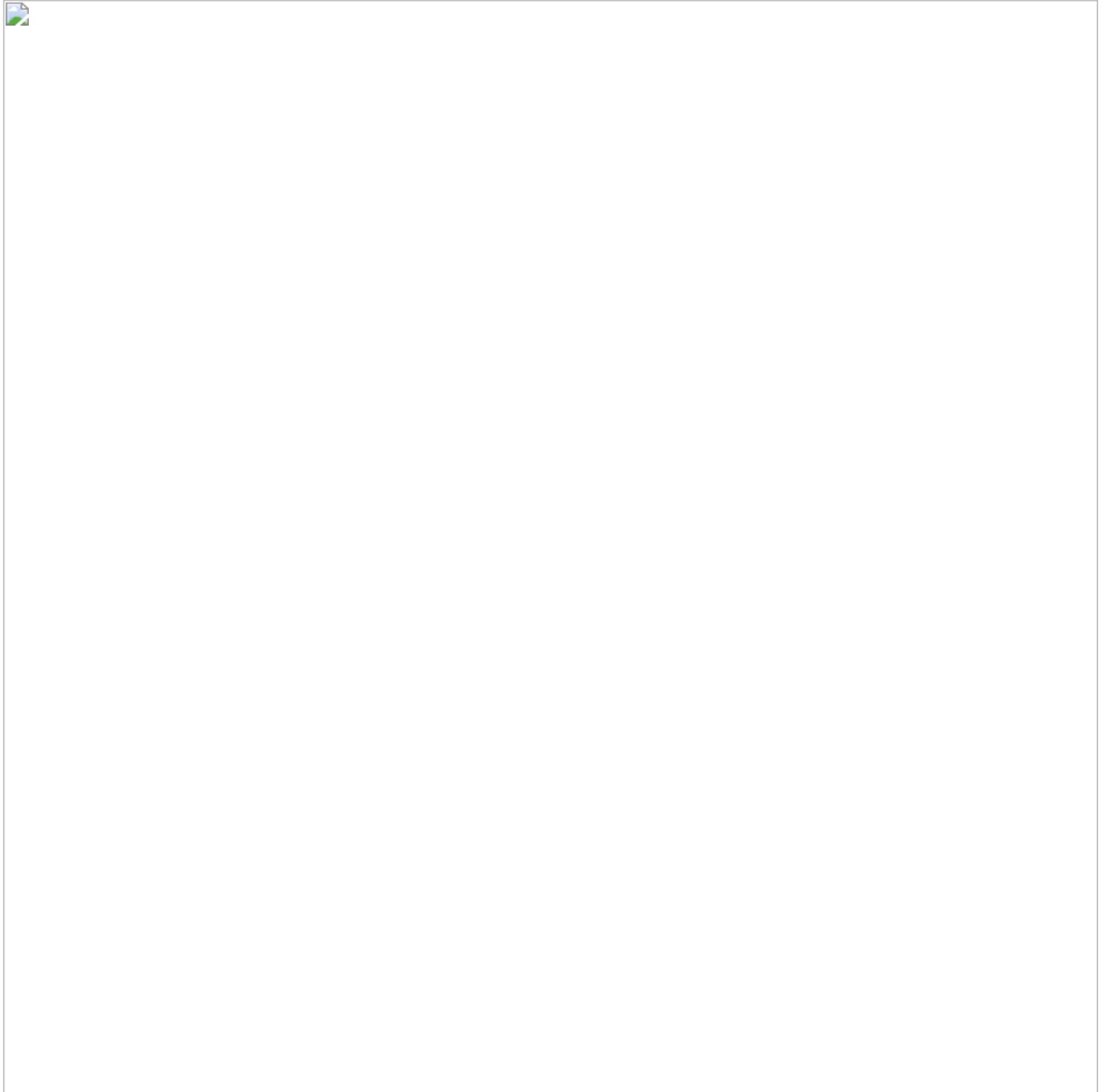


California's New Law and EPR Around Plastics Breaks Boundaries

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Producers of single-use plastic packaging and plastic single-use foodservice ware who do business in California must join a producer responsibility organization (PRO) by Jan. 1, 2024 to continue selling, importing, or distributing these materials in that state.

The Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) creates the most sweeping extended producer responsibility (EPR) program and strictest plastic reduction targets in the country, attest its backers.

SB 54 will not only impose mandates on manufacturers, but governments, regional agencies, recycling facilities, and haulers, as well as retailers and others who sell the covered materials. For instance, jurisdictions and recyclers will be required to include the materials in their collection and recycling programs. And disposal, recycling, and composting operations will have to submit information around amount and types of materials they handle and their destinations.

Most of the obligation falls on the

PROs whose main charges will be to ensure plastic is recycled and to pay to develop new recycling infrastructure—such as reuse or refill infrastructure and facility retrofits— to meet SB 54’s requirements. *Here are some primary targets:*

Jan. 1, 2025:

Expanded polystyrene foam foodservice ware must hit 25 percent recycling rate or it will be banned from sale.

Jan. 1, 2027:

PRO shall source reduce to less than 10 percent of plastic covered materials. (e.g., refilling, concentrating materials, rightsizing).

Jan. 1, 2028:

30 percent of plastic packaging must be recycled.

Jan 1, 2030:

- 40 percent of plastic packaging must be recycled.
- 20 percent must be source reduced, with no less than 4 percent being reused or refilled.

Jan 1, 2032:

- 65 percent of plastic packaging must be recycled.
- All packaging must be recyclable or compostable [with California Department of Resources Recycling (CalRecycle) determining what is deemed recyclable or compostable]
- Plastic packaging sold must be reduced by 25 percent.

Clear numerical targets (reducing by both units and weight); robust funding; strong enforcement mechanisms; and far-reaching authority bestowed on CalRecycle are what put the muscle behind this EPR, according to Heidi Sanborn, executive director of the National Stewardship Action Council. Sanborn was involved in drafting the bill.

CalRecycle can impose up to a \$50,000 fine per day, per violation if the PRO fails to hit performance targets by established dates. And in the face of failure, the organization must set up a corrective action plan that may for instance include shifting production to a covered material that can hit the recycling rate.

“But the really big component is that if CalRecycle determines the program is not working for the public benefit it can take power away from the PRO and go out for another producer-run program,” Sanborn says.

“The importance to me is that CalRecycle will have a lot of enforcement authority and multiple tools. This will begin with the ability to require corrective action to get the PRO on track rather than to keep spinning around without making improvements.”

The PRO will pay \$500M per year for 10 years to go into a Plastic Pollution Mitigation Fund, beginning in 2027. The PRO may collect up to \$150M of that from the plastic resin manufacturers.

Forty percent of what funnels into the mitigation fund will be directed to state agencies to recover, restore, and protect the environment. The remaining 60 percent will be dedicated to addressing harm done to disadvantaged communities (including rural and low income).

There are a few exemptions written into SB 54. Producers are not required to participate in the PRO if they hit a 65 percent recycling rate for three consecutive years prior to Jan. 2027, and if every year thereafter they demonstrate a 70 percent rate and validate that they can maintain it.

Exempt altogether are makers of medical product packaging, certain supplements, infant formula packaging, and bottle bill-covered materials, among a few others.

The League of California Cities, among entities that worked on SB 54, has long advocated for more state dollars to build out in-state recycling infrastructure and develop domestic markets for recycled materials.

This ask has become more critical in recent years, says Derek Dolfie, Legislative Affairs, lobbyist for the League of California Cities.

“With the economic effects of the COVID-19 pandemic and record- high inflation, cities asked the state to help fund some of these efforts to stave off the larger rate increases needed to create these new systems,” he says.

“This [EPR] model was ultimately what came together in SB 54. It begins to shift the costs of recycling away from cities and ratepayers and onto the manufacturers of these products. It will help close the loop on the circular economy by requiring manufacturers of products to be more responsible for the end life of their products.”

Alexis Jackson, Ocean Policy and Plastics lead, California Chapter of The Nature Conservancy, who also helped draft the bill, is optimistic that SB 54 will empower Californians to help turn the tide on plastic pollution.

“This legislation could result in tens of millions of tons of single-use plastic being eliminated and will generate billions of dollars to fund environmental mitigation efforts. That means communities harmed by plastics will be better resourced and protected, threats to wildlife will be drastically reduced, and the costs and responsibility of addressing plastic pollution will be diverted away from consumers and local governments back to those responsible for plastic production,” she says.

Further, given the sheer size of California, product redesign and plastic reduction efforts in that state could have rippling effects for plastics producers that distribute on a national or international scale, she says.

Sanborn calls out SB 54 as the first true circular economy bill she knows of, pointing to the parameters that the Ellen MacArthur Foundation (EMF) lays out to achieve a circular economy. The bill accomplishes all of them, she says, commenting:

“EMFs definition is threefold:

- 1)Reducing waste and pollution at the source, which we did with refill mandates as well as source reduction and elimination requirements;
- 2)Keeping materials in motion, which is the recycling and composting components; and
- 3)Regenerating natural systems, meaning remediating the harm we’ve done to the environment from these materials (Plastic Pollution Mitigation Fund).”

Throughout SB 54’s roughly four-year journey into law, a series of discussions transpired around which entity should play what role with this new model.

“What ultimately struck the balance was carefully crafted language that all stakeholders agreed to that outlined the responsibilities of each entity and provided pathways for disputes. Cities are not seeking to change their role in the waste system [collecting, sorting, and processing materials into recyclable commodities]. Rather, they [want to] ensure that plastic producers understand how the system works and that they have a more vested interest in the end life of their products,” Dolfie says.

Advocates pushing to tackle single-use plastic say the most fundamental way to do it is to reduce the amount of plastics produced and consumed in the first place.

This legislation puts California on that path, and in a “measurable and tangible way,” says Jackson by “exploring a circular economy to ensure potential leakage into communities and the environment is reduced, and providing the state with the authority to create more stringent measures if we fall short of our goals.”